

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KERRY DEVIN O'BRYAN,

Petitioner,

v.

Case No. 08-12738

Honorable John Corbett O'Meara

LOUIS C. EICHENLAUB,

Respondent.

OPINION AND ORDER DENYING
PETITIONER'S MOTION FOR BOND HEARING AND
RELEASE PENDING RESOLUTION OF § 2241 PETITION

On June 26, 2008, Petitioner Kerry Devin O'Bryan, a federal prisoner at the Federal Correctional Institution (FCI) in Milan, Michigan, filed a *pro se* petition for the writ of habeas corpus under 28 U.S.C. § 2241. (Dkt. # 1.) Petitioner was convicted of (1) one count of manufacturing counterfeit currency, 18 U.S.C. § 471, (2) one count of passing counterfeit currency, 18 U.S.C. § 471, (3) two counts of bank robbery, 18 U.S.C. § 2113(a), and, (4) two counts of possession of a firearm during and in relation to a crime of violence, 18 U.S.C. § 924(c)(1). In his pleadings, Petitioner challenged his convictions on the ground that he was not competent to stand trial; Petitioner argued that he was denied his constitutional right to a fair trial because he should have been afforded an evaluation by a neutral psychologist or psychiatrist and that the court had a duty to order a competency hearing. On September 18, 2008, the Court denied Petitioner's petition; the Court found that Petitioner's claim, challenging his convictions, was not properly before the Court under § 2241. (Dkt. # 5.)

Before the Court now is Petitioner's "Motion for Bond Hearing and Release Pending Resolution of § 2241 Petition." (Dkt. # 8.) For the reasons set forth below, the Court denies Petitioner's motion, finding the motion moot.

To receive bond pending a decision on the merits of a habeas corpus petition, a petitioner must show a substantial claim of law based on the facts and exceptional circumstances justifying special treatment in the interest of justice. *Lee v. Jabe*, 989 F.2d 869, 871 (6th Cir. 1993) (quoting *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990)). There will be few occasions where a habeas petitioner meets this standard. *Dotson*, 900 F. 2d at 79. Federal district courts may grant bail when granting the writ. *Sizemore v. District Court*, 735 F. 2d 204, 208 (6th Cir. 1984). By implication, the Court should not grant bail under other circumstances.

Here, because the Court found that Petitioner did not have a substantial claim of law, Petitioner's petition was denied and, because the Court already ruled on Petitioner's petition, Petitioner's motion is moot. The Court therefore denies Petitioner's motion as moot.

Accordingly,

IT IS ORDERED that Petitioner's "Motion for Bond Hearing and Release Pending Resolution of § 2241 Petition" is **DENIED**. (Dkt. # 8.) The Court has already ruled on Petitioner's petition for writ of habeas corpus—denying the petition. Therefore, Petitioner's motion is moot.

SO ORDERED.

s/John Corbett O'Meara
United States District Judge

Date: September 24, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, September 24, 2008, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager